IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE SHRI JUSTICE R.SUBHASH REDDY
WRIT PETITION No. 19101 of 1997

Dated 7th November, 2006

Between
M/s. Maharshi Alloys Private Limited
Madhugiri Road, Hindupur,
Anantapur District.

…Petitioner

And

A.P. State Electricity Board, represented by its
Member Secretary, Vidyut Soudha,
Somajiguda, Hyderabad and others.

…Respondents.

ORAL ORDER:

The petitioner - a mini steel plant, has filed this writ petition seeking a declaration that the action of the respondents in not refunding a sum of Rs. 3,23,375.52 ps. together with interest at 24% per annum from the date of payment till the date of adjustment is illegal and arbitrary and a consequential direction to the respondents to pay the said amount with interest.

The petitioner is a consumer of electricity and an agreement was entered into as per the Terms and Conditions of Supply framed under the Electricity Supply Act, 1948. During the year 1987, the then erstwhile A.P.State Electricity Board imposed power cut of 15% with effect from 15.11.1987 in respect of the petitioner-unit and the energy quota was fixed at 1,75,828 units per month on one shift basis. Subsequent to fixation of the said quota, on 20.11.1987 the petitioner made an application for increasing the quota on three-shift basis. The Board had agreed to the request of the petitioner and the quota was revised on three-shift basis The same was communicated to the petitioner through letter dated 10.12.1987. However, for the billing month of December, 1987, the respondents issued a bill to the petitioner including a sum of Rs.3,23,378.62 ps. stating that the said sum was charged towards penalty for exceeding the fixed quota. Challenging the said imposition of penalty, the petitioner filed Writ Petition No. 6999 of 1988. A learned single Judge of this court by order dated 5.8.1996 directed the respondents to refund the excess penalty collected from the petitioner over and above the penal charges calculated on the basis

of 144 units excess consumption of energy by the petitioner over and above the revised quota during the billing month ending with 24.12.1987, on the ground that while acceding to the request of the petitioner for increasing the quota, no effective date was mentioned and as much as the quota was revised in the middle of the billing month, the petitioner shall have the benefit of the enhanced quota for the entire month i.e. from the beginning of the whole month.

In this case, it is submitted by the learned counsel for the petitioner that as much as the said levy was unauthorized and illegal, though the respondents had adjusted the said amount of Rs.3,23,378.62 ps., but, however, the same was done without awarding any interest. Learned counsel submits that the petitioner is entitled for interest at the rate of 24% per annum on the sum of Rs. 3,23,378.62 ps. from the date of payment till the date of adjustment. He further submits that though there is no such provision in the agreement entered into, but on equitable grounds, the petitioner is entitled for the said interest, as much as the said amount was collected illegally from the petitioner. In support of his contention, the learned counsel placed reliance on the judgment of the Apex Court in the case of **Kanoria Chemicals and Industries Ltd. V. U.P. State Electricity Board**[1].

In the counter affidavit filed on behalf of the respondents, while denying various allegations of the petitioner, it is stated that as much as the petitioner had exceeded sanctioned load, the penalty was collected as per the terms and conditions of supply. Further, it is submitted that there is no such provision in the agreement, which entitles the consumer to claim interest. It is further stated that as per clause 32.4 of the Terms and Conditions of Supply, the petitioner did not seek any reference to the Board. It is also stated that as much as there was no direction for payment of interest by the

learned Judge in the writ petition filed earlier, the petitioner cannot seek for award of interest.

In the case on hand, the amount of penalty was collected on the ground that the petitioner had exceeded the quota fixed for consumption of power by the petitioner, which is a mini steel-plant. Subsequent to the fixation of the quota, though the petitioner requested, but even before such a request was considered, it was using the power in excess of the fixed quota. However, during the billing month, as the request of the petitioner was acceded to by the respondents, this court, in earlier writ petition, directed that the petitioner should be allowed to have the benefit for the entire billing month and directions were issued for refund of the penalty amount, and, as the penalty was already collected by the time the writ petition was disposed of with a direction to adjust the said penalty in the future bills of the petitioner. However, there was no direction with regard to interest, and, in that view of the matter, the petitioner cannot seek any directions in this writ petition with regard to payment of interest, that too, as a corollary to the allowing of the writ petition filed by it questioning the levy of penalty, which was directed to be adjusted in the future bills of the petitioner. In that view of the matter, it is not open for the petitioner to file this writ petition independently claiming interest only on the penalty, which was already collected and adjusted in the future consumption bills pursuant to the orders of this court, and no interest was claimed when the levy of penalty was challenged in the earlier writ petition.

In that view of the matter, it is not open for the petitioner to file a separate writ petition only for payment of interest on the penalty which was ordered to be adjusted in the future consumption bills of the petitioner, which, in fact, was adjusted. Any order for payment of interest or refund of the same, in this writ petition, will amount to modifying the earlier order passed by this Court in W.P.No.6999 of

1988, which has become final.

Even the judgment of the Apex Court relied on by the learned counsel for the petitioner is not applicable to the facts of this case, as in the said case, the Apex Court held that the consumer is not relieved of its/his obligation to pay late payment surcharge, which was in accordance with the terms and conditions of supply, whereas in this case, there is no stipulation for payment of interest in the terms and conditions of supply, which was entered into between the petitioner and the respondents. There was also no reference of the dispute to the Board, and this court in earlier writ petition adjudicated the validity of levy of penalty and gave its finding.

For the above reasons, the writ petition is devoid of any merits and the same is accordingly dismissed. No costs.

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7.11.2006

R.SUBHASH REDDY, J.

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[1] (1997) 5 SCC 772